The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WFS PHARMAGREEN, INC., Plaintiff, v. CANNA-PET, LLC, and DANIEL K. GOLDFARB, Defendants.	No. 2:16-cv-00491-RSL
DANIEL K. GOLDFARB and CANNA-PET, LLC, Counterclaim Plaintiffs, v. WFS PHARMAGREEN, INC., Counterclaim Defendant.	FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT
DANIEL K. GOLDFARB and CANNA-PET, LLC, Third-Party Plaintiffs, v. CANNA COMPANION, LLC; CANNA COMPANION PRODUCTS, INC.; and SARAH BRANDON and GREG COPAS, wife and husband and the marital community composed therein; and ROBERT STEWART and JANE DOE STEWART, husband and wife and the marital community composed therein, Third-Party Defendants.	

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Plaintiff alleges as follows:

THE PARTIES

1. Plaintiff, WFS Pharmagreen, Inc. (WFS) is a British Columbia Canada corporation that has a business relationship and licensing agreement with Canna Companion, LLC, a Washington limited liability company (Canna Companion), for the purpose, among other things, of using the name CANNA COMPANION to facilitate the production and sale of pet health products containing cannabis (Canna Companion Products). WFS is doing business in Washington state.

2. Defendant, Canna-Pet, LLC (Canna-Pet) is a limited liability company organized under the laws of the State of Washington with its principal place of business in King County, Washington. Canna-Pet is in the business of selling pet products that contain cannabis.

3. Daniel K. Goldfarb (Goldfarb) is a Washington resident residing in King County, Washington. Goldfarb is the principal member/owner of Canna-Pet.

VENUE AND JURISDICTION

4. Jurisdiction is proper in this court because the issue regarding alleged trademark infringement arises under federal law, namely 17 U.S.C. Section 1051 et. seq, (Lanham Act). The court has jurisdiction over this matter under 28 U.S.C. Section 1331 (federal question) and 28 U.S.C. Section 2201 (Declaratory Judgment Act).

5. Venue is proper in this court under 28 U.S.C. Sections 1391(b) and (c) because all the defendants reside in King County Washington which is within this district.

6. An actual case or controversy has arisen between the parties. Defendants have threatened litigation against Plaintiff and asserted that that Plaintiff's use of the name CANNA COMPANION constitutes trademark infringement as to Defendant's alleged trademark CANNA-PET. This statement and allegation threatens injury to Plaintiff.

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BACKGROUND

7. Canna Companion and Canna-Pet are involved in proceedings before the Trademark Trial and Appeal Board (TTAB) regarding their claimed trademarks.

8. In January 2014 Goldfarb applied with the U.S. Patent and Trademark Office (USPTO) to register the mark CANNA-PET. In February 2014 Canna Companion filed an application with the USPTO to register the mark CANNA COMPANION.

9. In March, 2015, Goldfarb's registration of CANNA-PET was issued and Canna-Pet filed a Notice of Opposition to Canna Companion's application. Canna Companion filed its response to Canna-Pet's opposition and filed a Petition to cancel Canna Pet's issued registration.

10. In August 2015 the TTAB consolidated the opposition and cancellation filings into a consolidated proceeding. After the consolidation, various motions and cross motions were filed and discovery was conducted by the parties but not completed. In January, 2016, the TTAB suspended the consolidated proceedings pending disposition of pending motions.

11. In early March, 2016, Canna-Pet, through its attorney of record, contacted Plaintiff alleging trademark infringement. These were false allegations. Canna-Pet threatened to file a lawsuit if the Plaintiff did not cease and desist from using the name Canna Companion and misrepresenting the Canna Companion products.

12. These threats are of grave concern and will cause irreparable harm to Plaintiff because the use of the name CANNA COMPANION and the use of the Canna Companion Products are vital to the business of Plaintiff.

SUMMARY OF THE DISPUTE AND ALLEGATIONS

Trademark Infringement

13. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 12 inclusive.

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14. While proceedings are pending between Canna-Pet and Canna Companion regarding the marks CANNA-PET and CANNA COMPANION, Defendants have elected to disrupt Plaintiff's business and threaten a lawsuit against Plaintiff.

15. Canna Companion has priority in the CANNA COMPANION mark as to the CANNA-PET mark. On information and belief, Canna Companion's first use of its CANNA COMPANION mark in lawful interstate commerce preceded Canna-Pet's use of its alleged CANNA-PET mark in lawful commerce, at least in connection with the sale and distribution of lawfully manufactured goods in interstate commerce. Canna-Pet's common law rights in the alleged CANNA-PET mark only commenced when (or if) Canna-Pet began manufacturing its products with lawfully acquired hemp rather than marijuana.

16. In 2013, when Goldfarb claims he was first using the mark CANNA-PET in interstate commerce, based on information and belief, he was using unlawful marijuana and not lawfully acquired hemp in the manufacture of his products. Since the dates of first use specified in his application were for unlawful goods, these dates are not accurate statements of Goldfarb's first use of his mark in lawful interstate commerce and the registration should not have been granted.

17. The alleged CANNA PET mark is comprised of two descriptive and dilute terms which do not have source indentifying capabilities. Thus, the CANNA-PET mark has only a limited scope of protection and there is no infringement between the marks.

18. Goldfarb's registration for "CANNA-PET" is void because the wrong party was identified as the owner in the application. When the underlying application was filed, Goldfarb claimed to be the owner of the trademark when in fact Canna-Pet, LLC was the owner. As a result, neither Goldfarb nor Canna-Pet can claim statutory protection because the underlying registration is void.

19. The CANNA COMPANION mark does not create the likelihood of confusion as to the sources of the goods with the public. .

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PRAYER FOR RELIEF

Plaintiff requests that the court grant the following relief:

A Judgment declaring that Plaintiff's use of the trade name and trade mark CANNA COMPANION does not constitute and has not constituted trademark infringement.

B. An order enjoining Defendants from contacting any parties doing business with Canna Companion and Plaintiff and wrongfully alleging trademark infringement.

C. Judgment awarding Plaintiff its attorneys fees and costs incurred in connection with this lawsuit.

DATED this 19th day of August, 2016.

VANDEBERG JOHNSON & GANDARA, LLP

By ______________________
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